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January 7, 2011

BY U.S. Mail and Electronic Filing

Honorable Susan D. Wigenton, United States District Judge
KING FED. BLDG. & UNITED STATES COURTHOUSE
50 Walnut Street, P.O. Box 999
Newark, New Jersey 07101-0999

Re: **Russell-Brown v. The University of Florida Board of Trustees et al., No. 10-cv-04017-SDW-MCA**

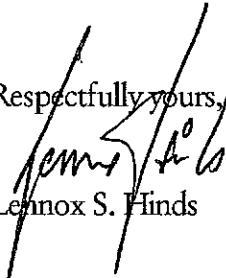
Dear Judge Wigenton:

I represent Plaintiff Sherrie Russell-Brown in the above-referenced matter.

Ms. Russell-Brown has a pending Motion to Amend (Docket Entry No. 44). I write to advise Your Honor that, if granted, I anticipate also including as exhibits, the two attached communications authored, respectively, prior and subsequent to Ms. Russell-Brown's protected activity -- a January 7, 2004 letter from Defendant Jerry "strongly" endorsing and "enthusiastically" supporting Ms. Russell-Brown's promotion to Associate Professor, stating that she had "served the college and university exceptionally well" and a May 9, 2008 e-mail from Defendant Jerry to two faculty members from the Oxford Defendants, regarding Ms. Russell-Brown's DPhil program. Otherwise, the content of the supplemental complaint (Docket Entry No. 44-2) would remain unchanged.

Thank you for your consideration.

Respectfully yours,


Lennox S. Hinds

LSH/sbt

Attachments

Sherrie Russell-Brown

28. Dean's Letter



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22

January 7, 2004

Dr. David Colburn
Provost
235 Tigert Hall
University of Florida
Gainesville, FL 32611

Re: Promotion of Sherrie Lynne Russell-Brown

Dear Dr. Colburn:

The faculty of the Levin College of Law has voted nearly unanimously (43 yes; 2 no) to recommend Assistant Professor Sherrie Lynne Russell-Brown for promotion to the rank of Associate Professor. I fully concur with and strongly endorse the faculty's recommendation.

Background

Professor Russell-Brown is eligible for promotion. She joined our faculty in July 2001 as an Assistant Professor of Law.

Professor Russell-Brown received her B.A. in 1989 from Pomona College. She graduated from the Columbia University School of Law in 1992, where she was a member of the *Human Rights Law Review*. After graduation, she clerked for one year for the Hon. Earl Ben Gilliam, United States District Judge for the Southern District of California. From 1993 to 1998, she practiced law with the firm of Paul, Weiss, Rifkind, Wharton & Garrison in New York City. She returned to the Columbia University School of Law in 1998, and received her LL.M. in 1999, with a concentration in International Law and International Human Rights Law. The next year was spent in residence at the International Women's Human Rights Law Clinic in Flushing, New York, where she advanced from Post-Graduate Fellow to Attorney-in-Residence to Adjunct Professor. She was awarded a Blackmun Fellowship (named after the late Justice Harry Blackmun) at the Center for Reproductive Law and Policy in New York City in 2000, but she declined the fellowship to accept a position as staff attorney with the Center, a position she held until joining the faculty of the Levin College of Law in July 2001 as an assistant professor. At the law school, she teaches in the areas of international law, international human rights law, international humanitarian law, and international criminal law.

Sherrie Russell-Brown
28. Dean's Letter

(23)

Dr. David Colburn
January 7, 2004
Page 2

Summary

Professor Russell-Brown is an effective, dedicated teacher. Her research program has been ambitious. She has published a substantial body of work of high quality, and she has served the college and university exceptionally well. I set forth below my detailed evaluation of her performance on each of the appropriate measures of faculty performance.

Teaching

Since joining the College of Law faculty, Professor Russell-Brown has established a solid record of teaching that meets the college's and university's requirements for promotion. Her student evaluations for "overall rating" have fluctuated: Torts, Fall 2001, 3.81 vs. 4.28 college mean, 88 students; Torts, Spring 2002, 4.67 vs. 4.20 college mean, 91 students; International Organizations, Fall 2002, 5.00 vs. 4.27 college mean, 16 students; War Crimes, Genocide, Terrorism & International Criminal Law Seminar, Spring 2003, 4.94 vs. 4.22 college mean, 18 students; Torts, Spring 2003, 3.32 vs. 4.22 college mean, 77 students. Because Professor Russell-Brown, like other assistant professors, is early in her career, this data set is limited, but after her first semester of teaching, her evaluations have been consistently well above the mean – with the aberration of the most recent course for which data are available, Torts in the Spring 2003 semester. In my opinion, which is consistent with the opinion of Associate Dean Friel and other faculty who are aware of the circumstances, this unusually low rating reflects Professor Russell-Brown's firm handling of a challenge to her authority in class and does not reflect negatively on any aspect of Professor Russell-Brown's teaching.¹

Peer reviews of her teaching are also positive. Professor Woodhouse, in reviewing the fall 2003

¹With assistance of others, I reconstruct the events this way: Because Professor Russell-Brown had to cancel a class, she scheduled a make-up that immediately followed another regularly scheduled class. During the break between sessions, an anonymous note was placed on the lectern stating, in so many words, "It's not fair to make us to do this. Cancel the class unless you want to get negative evaluations for your tenure." Students were generally aware that she was being evaluated for some purpose because other faculty had been present in prior classes for the purpose of preparing reviews of her teaching. Professor Russell-Brown did not cancel the make-up class; she also read the note to the class, said that she took offense at the note, and stated that she would not be threatened by the note. This event occurred late in the semester, shortly before student evaluations were procured. Any reasonable assessment of the situation must conclude that this incident skewed the evaluations for this particular course, thereby rendering them unreliable.

24
Sherrie Russell-Brown
28. DEAN'S LETTER

Dr. David Colburn
January 7, 2004
Page 3

International Law Class, writes that the class she visited was "excellent" and that Professor Russell-Brown "is a fine addition to our already impressive international law and human rights teaching faculty." Professor Cotter, in reviewing the same course, found that the classes he observed were "highly informative and well-organized" and that Professor Russell-Brown's approach to the material was "effective." Dean Friel, in reviewing the spring 2003 Torts class, writes that Professor Russell-Brown "seemed comfortable with the class and in command of the material as she guided the discussions . . . [She] is indeed on her way to becoming an excellent teacher." Professor Twitchell, in review the same course, writes that the classes she observed were "well taught" and that Professor Russell-Brown's "classroom demeanor is exceptional." Professor Calfee, in reviewing the spring 2002 Torts class, writes that Professor Russell-Brown "is an accomplished, hard-working classroom teacher and definitely one of the brighter stars in the firmament." Professor Mazur, in reviewing the same course, commented upon the respect that the students had for Professor Russell-Brown and observed that she is "very motivated" to enhance her teaching skills.

Professor Russell-Brown, by all indications, is an effective teacher who meets the college's and university's standards with respect to teaching.

Scholarship

Under the standards of the Levin College of Law, "[t]o be eligible for promotion to associate professor, an assistant professor must produce in published or publishable form at least one substantial article or other work demonstrating a capacity for creative research." This standard is consistent with that which prevails at comparable law schools in the United States.² Reviewers

²As this footnote explains in more detail, the system of scholarship prevailing in law schools in the United States is unlike many other social science disciplines. In contrast to other disciplines, law has very few peer-reviewed journals. Instead, each law school has at least one, and often many more, student-edited journals. These journals, called "law reviews," are the primary academic publications of the legal academy. The placement of an article in a law review follows a highly competitive process in which the article is subjected to critical review by senior student editors, selected only with the concurrence of several editors, and frequently with the approval of an expert, resident faculty member. The prestige of the journals closely tracks that of the home schools of which they are a part. Therefore, the law reviews in which a school's faculty members publish are a currency for measuring the success of a faculty. Publication in a top law review is extremely competitive. For example, in recent years, the *University of Florida Law Review* has accepted only about three percent of the articles submitted to it for publication. Law reviews also provide the primary, non-judicial research material for court decisions. Articles

(25)
Sherrie Russell-Brown
28. DEAN'S LETTER

Dr. David Colburn
January 7, 2004
Page 4

are asked to provide an honest assessment of the candidate's strengths, weaknesses, and potential as a scholar.

Since joining the faculty in 2001, Professor Russell-Brown has published or had accepted for publication five articles, one essay, and one book review:

Article, "The Last Line of Defense: The Doctrine of Command Responsibility and Gender Crimes in Armed Conflict, *Wisconsin International Law Journal* (forthcoming 2004) (page proofs; 38 pp.) (referred to below as "Wisconsin gender crimes article");

Article, "Poisoned Chalice? The Rights of Criminal Defendants Under International Law During the Pre-Trial Phase," *UCLA Journal of International Law & Foreign Affairs* (forthcoming 2003) (manuscript; 49 pp.) (referred to below as "UCLA pre-trial rights article");

Article, "Rape as an Act of Genocide," 21 *Berkeley Journal of International Law* 350-374 (2003) (referred to below as "Berkeley genocide article");

Article, "Out of the Crooked Timber of Humanity: The Conflict Between South Africa's Truth and Reconciliation Commission and International Human Rights Norms Regarding 'Effective Remedies,'" 26 *Hastings International & Comparative Law Review* 227-263 (2003) (referred to below as "Hastings South Africa truth commission article");

Article, "Labor Rights as Human Rights: The Situation of Women Workers in Jamaica's Export Free Zones," 24 *Berkeley Journal of Employment & Labor Law* 179-201 (2003) (referred to below as "Berkeley labor rights article");

Essay, "Bridging the 'Divide' Between Feminism and Child Protection Using the Discourse of International Human Rights," *Southern California Review of Law and Women's Studies* (forthcoming 2004) (manuscript; 9 pp.) (referred to below as "Southern California rights essay");

are frequently monograph length, i.e., fifty or more pages. hence, it is quite unusual for a law faculty member to publish a book until after appointment to full professor. At the best law schools, production of one substantial article before promotion to Associate Professor is a norm; more than one article is outstanding performance. The completion of three substantial articles before tenure and promotion to full professor is a norm; a greater number of publications indicates excellent productivity.

Sherrie Russell-Brown
28. Dean's Letter

26

Dr. David Colburn

January 7, 2004

Page 5

Book Review, "A U.N. Solution to a Problem from Hell," reviewing Samantha Power, A Problem from Hell: America and the Age of Genocide, *Washington University Global Studies Law Review* (forthcoming 2003)(page proofs; 19 pp.) (referred to below as "book review").

Although some of the pieces on this list are not substantial works within the meaning of the College of Law standard for promotion, the cumulative work product of Professor Russell-Brown is unquestionably substantial. In addition, the external and internal reviews of her scholarship, viewed as a whole, are positive. To the extent there are negative comments and criticisms, the reasonable inference to be drawn is that the cause of the deficiency giving rise to the criticism is that Professor Russell-Brown has attempted to do too much in too short a period of time. When the impact of trying to be extraordinarily (and perhaps excessively) prolific in a short period of time is peeled away, what is left is a large body of high-quality, rigorous analysis and writing, and what is revealed is an exceptionally promising scholar with a creative mind, a young faculty member who promises to make significant future contributions to her field, and a person who has met the scholarship standards for promotion to associate professor.

Professor David Weissbrodt, Fredrikson & Byron Professor of Law at the University of Minnesota, reviewed the *UCLA* pre-trial rights article and concluded: "The article makes a contribution to the relevant literature and should be counted favorably as an indication of productivity for an individual who is seeking promotion to Associate Professor."

Professor David Bederman of the Emory University School of Law writes: "I have no doubts that Professor Russell-Brown is an outstanding young scholar of exceptional promise. . . . She is asking big questions, and providing careful and nuanced answers. . . . I believe that [her] scholarship certainly fulfills your faculty's standard of 'demonstrating a capacity for creative research.'" He describes the *Berkeley* genocide article as "a superb treatment of the difficult and conflicting international law precedents on rape as a war crime and act of genocide," and calls it "one of the best and most succinct explanations of the notion that organized rape in wartime can constitute genocide." He states that the article "has proven quite influential . . . on a very significant jurisprudential issue in feminist approaches to international law." He applauds the *Wisconsin* gender crimes article as "coherent and cogent." He describes the *UCLA* pre-trial rights article as "thoughtful and careful." He describes the *Berkeley* labor rights article as an "outstanding case study." His highest praise goes to the *Hastings* South Africa truth commission article, stating that her analysis of the treaties and cases are "as good an explanation as I have ever read of these cases and doctrines." He encourages her to go further with her analysis, perhaps in a book-length project.

Sherrie Russell-Brown
28. DEAN'S LETTER

27

Dr. David Colburn

January 7, 2004

Page 6

Professor Penelope Andrews of CUNY School of Law-Queens College reviewed the *Hastings* South Africa truth commission article and observed that Professor Russell-Brown "writes lucidly and persuasively." She describes the argument as "original and provocative," and "one that will be revisited in several international contexts in the future." While disagreeing with the thesis, Professor Andrews concludes that the article "demonstrates the author's admirable writing skills and potential as a scholar." Professor Andrews also reviewed the *Southern California* rights article, which she describes as "an interesting exploration, a series of ruminations merely aiming to raise complicated questions without solution." She concludes that "the author once again demonstrates her capacity for creative analytical engagement with difficult theoretical questions involving human rights. . . . From my experience, she adequately satisfies the scholarship requirements for promotion."

Professor Adeno Addis, W. Ray Forrester Professor at Tulane University Law School, reviewed the Berkeley genocide article, and concludes that "Professor Russell-Brown has developed and defended her thesis carefully and clearly, and in my judgment successfully. This is a good article."

Professor Hope Lewis at the Northeastern University School of Law reviewed the *UCLA* pre-trial rights article, the *Wisconsin* gender crimes article, and the book review while each was in manuscript, pre-publication form. Professor Lewis writes that "all [are] of publishable quality and will make substantial and creative contributions to the scholarly literature on international human rights law and international criminal law. . . . Each article is clear, well written, free of jargon, and well researched. Each reflects Assistant Professor Russell-Brown's command of the jurisprudence and scholarship in the emerging field of international criminal law." Based on this work, Professor Lewis also concludes that Professor Russell-Brown meets the requirements for promotion.

Professor Leslye Obiora of the University of Arizona College of Law reviewed the book review, and concluded that "[i]f this manuscript is representative of the other works she has submitted in support of her application for tenure, I recommend her candidacy with enthusiasm."

Professor Naomi Roht-Arriaza of the University of California-Hastings College of Law reviewed the *Hastings* South Africa truth commission article and the book review. She disagreed with aspects of the analysis in both pieces, but concludes that "the articles demonstrate a capacity for creative research." She concludes: "these pieces show quite a bit of promise, but also some significant problems with the ambiguities and subtleties of analysis . . . If these were tenure pieces, I would be more worried. As pieces reflective of the early years of an academic career, I think they are more than adequate, and meet the standard for promotion."

Sherrie Russell-Brown

28. Dean's Letter

28

Dr. David Colburn

January 7, 2004

Page 7

Professor Dinah Shelton at the University of Notre Dame provided a negative assessment of the *Hastings* South Africa truth commission article and the *Berkeley* labor rights article. She complimented the *Berkeley* genocide article. She also has brief comments on other pieces. Her overall conclusion was that Professor Russell-Brown "shows great ambition" and "potential" and "promises to be a contributor to the development of international law in the future." Nevertheless, her specific comments about the *Hastings* and *Berkeley* pieces, if credited, would be troubling. Professor Russell-Brown wrote a response to this review, and this response was included in the packet that the law faculty reviewed. The response states that the reviewer criticized the author for overlooking sources that were, in fact, cited and/or discussed in the footnotes. The response points out other factual errors made by the reviewer when evaluating the pieces. The faculty found Professor Russell-Brown's response to be persuasive, and a number of faculty confirmed the accuracy of Professor Russell-Brown's statements about factual errors in the review. Given the other reviews, the faculty's assessment was that the Shelton review is an outlier that should be either substantially discounted or disregarded.

Professor Michael Gordon provided an internal review of the *Berkeley* labor rights article. He wishes the article were longer and that some of the analysis was deeper, but he concludes that the article "is a very good exploration of an important issue by a very curious mind and capable pen" and that meets the criteria for promotion to associate professor.

Professor Paul Magnarella, Professor of Anthropology at the University of Florida and Affiliate Professor of Law, also provided an internal review of all her articles, and concludes that these "publications to date have established her as a serious scholar, and I am sure she has great potential to become prominent in her field."

The internal review of Professor Michelle Jacobs, which focused on two of the pieces, is positive overall. She describes the *Berkeley* genocide article as "competently written," although there are several points in the piece where she thought amplification would have been helpful. Professor Jacobs observes that the *Hastings* South Africa truth commission article is "successful in raising interesting and thoughtful questions about the [truth and reconciliation] process," but she again observes that some of the analysis was conclusory and would have benefitted from fuller treatment. Professor Jacobs concludes that "Professor Russell-Brown has adequately satisfied our standards for promotion to Associate in that she is making satisfactory progress in her development as a scholar." She offers that Professor Russell-Brown's effort to be prolific has led to sacrifice of some depth in her work, and she encourages that her future pieces be fewer but of "appreciable length."

Professor Russell-Brown has written a substantial body of work that shows great creativity, ambition, a strong intellect, and the ability to communicate complex ideas. There are indications

Merrie Russell-Brown

28. Dean's Letter

(29)

Dr. David Colburn

January 7, 2004

Page 8

in the reviews that her effort to be extraordinarily prolific has weakened some of the pieces in some respects. But that she has "demonstrat[ed] a capacity for creative research" is beyond dispute, as is reflected by the overwhelming faculty vote in support of promotion.

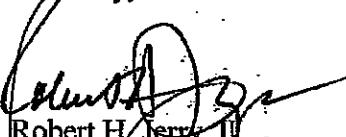
Service

Since her arrival on the faculty, Professor Russell-Brown has served on several law school committees, including the Non-Tenure Track Committee, the Curriculum Committee, and the International Programs and Comparative Law Committee. She has served on two law school search committees, and has supervised a large number of students in the college's externship program. She has supervised the international law moot court team. At the university level, her service includes a term, which she is currently serving, on the UF Faculty Senate and membership on the executive committee of the Institute for Child and Adolescent Research and Evaluation. She is also serving on one Ph.D. dissertation and three Masters committees. This record meets or exceeds the requirements of the law school and the university for promotion.

Conclusion

In sum, Professor Russell-Brown has fully satisfied the requirements for promotion to associate Professor. I fully concur with the faculty's recommendation, and I enthusiastically support her nomination.

Sincerely,


Robert H. Jerry, II
Dean and Levin, Mabie and Levin Professor of Law

From: Robert Jerry
To: vaughan.lowe@law.ox.ac.uk, frank.berman@law.ox.ac.uk
Date: 5/9/2008 2:01 AM
Subject: Sherrie Russell-Brown report and recommendation

Thank you for the copy of your report and recommendation. I would ask that you let me know when Sherrie has been removed. We are scheduled to submit our position statement to the EEOC in a few weeks. I would like to be able to represent that she also could not fulfill the requirements for the DPhil.

Bob Jerry

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